

## JUDICIARY

DATE 2-16-07

[illegible]



## SENATE STANDING COMMITTEE REPORT

February 16, 2007

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Joint Resolution 10** (first reading copy -- white) **do pass**.

Signed: 

*Senator Jesse Daslovich, Chair*

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required   *57*  

351239SC.ssc



## SENATE STANDING COMMITTEE REPORT

February 16, 2007

Page 1 of 3

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 31** (first reading copy -- white) do pass as amended.

Signed: 

Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Page 1, line 11.

**Following:** line 10

**Insert:** "WHEREAS, the Legislature recognizes that the right of parents to the custody and control of their children is based upon the liberties secured by the United States and Montana Constitutions and that a parent's right to that custody and control is therefore normally supreme to the interests of other persons; and

WHEREAS, the Legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of a child to a grandparent or other caretaker relative for a lengthy period of time; and

WHEREAS, the Legislature finds that a caretaker relative frequently offers a child a loving, stable, and secure environment in which to live, make friends, and attend school, which is an environment not provided by a parent who temporarily abandons a child; and

WHEREAS, a child is deprived of that caring and safe environment when a parent returns to claim the child with little or no notice to the caretaker relative; and

WHEREAS, this situation, which in some instances has occurred multiple times with the same child, is disruptive to the more stable life offered by the caretaker relative and may violate the child's rights ensured by Article II, section 15, of the Montana Constitution, such as the right under Article II, section 3, of the Montana Constitution of seeking safety, health, and happiness; and

WHEREAS, for these reasons, it is the purpose of [this act]

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required — 

351444SC.ssc

to exercise the Legislature's police powers for the health and welfare of children who have been abandoned by their parents to the care of relatives and to create a procedure, applicable in limited situations caused by the voluntary surrender of a child by a parent, under circumstances indicating abandonment, whereby a child in the care of a relative may remain with that relative while the issue of abandonment by the parent is reviewed and determined by a court of law; and

WHEREAS, the Legislature believes that this temporary infringement on the right of a parent to the custody and control of a minor child is justified by the possibility of abandonment by the parent, because the welfare of the child is at stake, and because of the likely violation of the child's rights ensured by Article II, section 15, of the Montana Constitution."

2. Page 1, line 14 through page 2, line 9.

**Strike:** section 1 in its entirety

**Renumber:** subsequent sections

3. Page 3, line 17 through line 18.

**Following:** "relative," on line 17

**Strike:** remainder of line 17 through "resides," on line 18

4. Page 3, line 18.

**Following:** the first "and"

**Strike:** "to the local and state offices of"

**Insert:** "may be provided to"

5. Page 3, line 29.

**Following:** "department"

**Strike:** "shall"

**Insert:** "may"

6. Page 4, line 12.

**Following:** line 11

**Insert:** "(c) During or after the 14-day period established under subsection (5)(a), the caretaker relative may commence a parenting plan proceeding under 40-4-211 or petition the court to be appointed the guardian of the minor under 72-5-225."

7. Page 4, line 13 through line 15.

**Following:** "known" on line 13

**Strike:** remainder of line 13 through "chapter" on line 15

8. Page 4, line 17 through line 18.

**Following:** "relative" on line 17

**Strike:** remainder of line 17 through "considered by the court" on line 18

9. Page 4, line 20.

**Following:** "based"

**Strike:** "only"

10. Page 4, line 20 through line 21.

**Following:** "nonabandonment" on line 20

**Strike:** remainder of line 20 through "relative" on line 21

11. Page 4, line 30.

**Following:** line 29

**Insert:** "(9) As used in this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related to a child by blood, marriage, or adoption by another individual and who has care and custody of a child but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Parent" means a biological or adoptive parent or other legal guardian of a child."

12. Page 5, line 1.

**Strike:** "[Sections 1 and 2] are"

**Insert:** "[Section 1] is"

13. Page 5, line 2.

**Following:** "Title" in two places

**Strike:** "41, chapter 3"

**Insert:** "40, chapter 9"

**Strike:** "[sections 1 and 2]"

**Insert:** "[section 1]"

14. Page 2, line 5.

**Strike:** "2(8)(b)"

**Insert:** "1(8)(b)"

15. Page 5, line 7.

**Strike:** "2(8)"

**Insert:** "1(8)"

16. Page 5, line 10.

**Following:** "relative"

**Strike:** ", all as defined in [section 1],"

- END -



## SENATE STANDING COMMITTEE REPORT

February 16, 2007  
Page 1 of 4

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 49** (first reading copy -- white) do pass as amended.

Signed: 

*Senator Jesse Laslovich, Chair*

And, that such amendments read:

1. Title, line 10.

**Following:** "PROVIDING"

**Insert:** "AN EFFECTIVE DATE AND"

2. Page 1, line 11.

**Following:** line 10

**Insert:** "WHEREAS, the Legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana Constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons; and

WHEREAS, the Legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time; and


WHEREAS, regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents; and

WHEREAS, in this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the educational and educationally related medical needs of the child; and

WHEREAS, it is the purpose of the Legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana Constitution by granting a caretaker

**Committee Vote:**

Yes 12, No 0

Fiscal Note Required 

351445SC.ssc

relative limited authority for a child left in the relative's care; and

WHEREAS, it is the intent of the Legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in school, discuss with the school district the child's educational progress, and consent to an educational service and to medical care for the child related to an educational service without superseding any parental rights regarding the child; and

WHEREAS, [sections 1 and 2] are not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in [sections 1 and 2]."

3. Page 1, line 14 through page 2, line 18.

**Strike:** section 1 in its entirety

**Renumber:** subsequent sections

4. Page 2, line 30.

**Following:** line 30

**Insert:** "(2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may not enroll the child in school, without the school's permission, if:

(a) the child's residency with the caretaker relative is primarily for the purpose of:

(i) attending a particular school;  
(ii) participating in athletics at a particular school; or  
(iii) taking advantage of special services or programs offered at a particular school; or

(b) the child is currently subject to an expulsion or suspension at the child's previous school."

**Renumber:** subsequent subsection

5. Page 2, line 30.

**Strike:** "3"

**Insert:** "2"

6. Page 3, line 3.

**Following:** line 2

**Insert:** "(4) For the purposes of [section 2] and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit completed in compliance with [section 2].

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care, by a health care provider for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease when care is needed to prevent serious bodily harm or death to the child.

(e) "Parent" means a biological or adoptive parent or other legal guardian of the child."

7. Page 4, line 11 through line 13.

**Strike:** subsection (9) in its entirety

**Renumber:** subsequent subsection

8. Page 5, line 1.

**Following:** "activity,"

**Insert:** "to circumvent a disciplinary action of a previous school,"

9. Page 6, line 25.

**Strike:** "diseased"

**Insert:** "deceased"

10. Page 6, line 29.

**Strike:** "2"

**Insert:** "1"

11. Page 7, line 3.

**Following:** "1"

**Strike:** "through 3"

**Insert:** "and 2"

12. Page 7, line 11.

**Strike:** "3"

**Insert:** "2"

13. Page 7, line 13.

**Strike:** "3"

**Insert:** "2"

14. Page 7, line 15.

**Strike:** "3"



**Insert:** "2"

15. Page 7, line 19.

**Strike:** "3"

**Insert:** "2"

16. Page 7, line 23.

**Strike:** "3"

**Insert:** "2"

17. Page 9, line 16.

**Strike:** "3"

**Insert:** "2"

18. Page 10, line 12.

**Following:** "[Sections 1"

**Strike:** "through 3"

**Insert:** "and 2"

19. Page 10, line 13.

**Following:** "[sections 1"

**Strike:** "through 3"

**Insert:** "and 2"

20. Page 10, line 16.

**Strike:** "3(4)(a)"

**Insert:** "2(4)(a)"

21. Page 10, line 18.

**Strike:** "3(4)(a)"

**Insert:** "2(4)(a)"

22. Page 10, line 19.

**Strike:** "3(10)"

**Insert:** "2(9)"

23. Page 10, line 20.

**Insert:** "NEW SECTION. Section 9. Effective date. [This act]  
is effective July 1, 2007."

24. Page 10, line 22.

**Following:** "parent"

**Strike:** ", all" through "October"

**Insert:** "on or after July"

- END -



## SENATE STANDING COMMITTEE REPORT

February 16, 2007

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 347** (first reading copy -- white) do pass as amended.

Signed: 

Senator Jesse Laslovich, Chair

And, that such amendments read:

1. Page 1, line 16.

**Following:** "general"

**Insert:** "reasonably"

2. Page 1, line 17.

**Strike:** "and"

3. Page 1, line 19.

**Following:** "easement"


**Insert:** "; and

(c) the easement holder fails to fulfill the provisions of Title 76, chapter 6"

- END -

Committee Vote:

Yes 12, No 0

Fiscal Note Required 

351446SC.ssc

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## COMMITTEE FILE COPY

### TABLED BILL

The **SENATE JUDICIARY COMMITTEE** TABLED **SB 154, SB 156, SB 373, SB 392**, by motion, on  
Friday, February 16, 2007.

Carol Andersen  
(For the Committee)

KJ  
(Secretary of the Senate)

12-16  
(Time) (Date)

February 16, 2007

Carol R. Andersen, Secretary

Phone: 444-4697

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**MONTANA STATE SENATE  
2007 LEGISLATURE**

**JUDICIARY**

**ROLL CALL VOTE**

DATE 2-16-07 BILL NO. 382 NUMBER \_\_\_\_\_

MOTION: \_\_\_\_\_

NAME	AYE	NO
SEN. LYNDA MOSS (D)		✓
SEN. DAN McGEE (R) <i>P</i>	✓	
SEN. CAROL WILLIAMS (D) <i>P</i>		✓
SEN. CAROL JUNEAU (D)		✓
SEN. GERALD PEASE (D)		✓
SEN. JIM SHOCKLEY (R)	✓	
SEN. AUBYN CURTISS (R)	✓	
SEN. JERRY O'NEIL (R)	✓	
SEN. LARRY JENT (D)		✓
SEN. GARY PERRY (R)	✓	
SEN. DAVID WANZENRIED (D)		✓
SEN. JESSE LASLOVICH (D) CHAIRMAN		✓
	5	7
VALENCIA LANE, LSD		
CAROL ANDERSEN, COMMITTEE SECRETARY		

FRT

## SENATE PROXY FORM

According to Senate Rule 30-70 ( 13) ( f ) , a committee member may vote by proxy using a standard form.

### PROXY VOTE

I, the undersigned, hereby authorize Senator Perry

to vote my proxy on any issue before the Senate Judiciary

\_\_\_\_\_ Committee

held on 2/16/07, 2007.

M. G. Lee  
SENATOR  
STATE OF MONTANA

# SENATE PROXY FORM

According to Senate Rule 30-70 ( 13) ( f ) , a committee member may vote by proxy using a standard form.

## PROXY VOTE

I, the undersigned, hereby authorize Senator Thurs

to vote my proxy on any issue before the Senate \_\_\_\_\_

\_\_\_\_\_ Committee

held on yes \_\_\_\_\_, 2007.

SB 347 amendment

SB 10 yes

Committee yes

SB 41 amendment yes  
amendment yes

Carol Williams

SENATOR  
STATE OF MONTANA

SB 392  
amend.  
no

SB 154 aye  
SB 156 aye

SB 323 aye

SB 31 amendment yes  
amendment yes  
yes



## SENATE PROXY FORM

According to Senate Rule 30-70 ( 13) ( 1 ), a committee member may vote by proxy using a standard form.

### PROXY VOTE

I, the undersigned, hereby authorize Senator Mo 55

to vote my proxy on any issue before the Senate \_\_\_\_\_

\_\_\_\_\_ Committee

held on yes \_\_\_\_\_, 2007.

SB 347 amended yes

SB 41 amended  
yes  
amended  
yes  
yes

Paul Jones  
SENATOR  
STATE OF MONTANA

SB 392 OS  
amended  
no

**MONTANA STATE SENATE  
2007 LEGISLATURE**

**VISITOR REGISTER**

**JUDICIARY**

DATE 2-16-07

BILLS BEING HEARD TODAY SB 426, SB 447, SB 450  
SJ 10

**PLEASE PRINT**

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Andrea T. Olsen	439-2547	MT Trial Lawyers Assoc	426	X	
Dani Judge	459-1708	Transfers Inc 190 MT Regional Workers Resource Council	SB 426	X	
Lamy Jones	370-0696	Liberty Northwest	SB 426		X
George Weed	406-544-8849	MT Self Insurers Assoc	SB 426		X
Sally Hilander	406 444-7401	Dept. of Corrections	SB 447	X	
MIKIE BAKER-HAJEK	406 771-1180 x219	SELF AND VICTIM-WITNESS OF GREAT FALLS + CASCADE CTY	SB 447	X	
Algunin Burmark	2-0230	Am Old Assn	SB 426		X
Thomas Murphy	452-2345	Injured Workers	SB 426	X	
K. ALLAN WARD	455-3690	INJURED WORKERS	SB 426	X	
Kathleen Birrap	465-3780	Crow and Feet Belknap	SB 450	X	
Mike Foster	237-3038	SVH, SJH, HAN, WNH	SB 426	X	
JOHN GREEN	444-2122	ST. PETER'S HOSPITAL	SB 426	X	
John Flink	442-1911	MHA	SB 426	X	
STEVE LOZAR	675-2700	CONF. SALISH/KOOTENAI TRIBES	SB 450	X	
RON TRAHAN	675-2700	CS+KF	SB 450	X	
James Steele	1111	1111	111	X	
Jennifer Hl-Hart	461-7530	MCADSV	447	X	
Ali Barandor	444-2026	AG's office / DOJ	447	X	
Mary "Moody" Shippen	262-2459	MT. Ass Clerks of Dist. Ct	447-Information		
Rick Byfer	442-7830	attorney for workers	426	X	
Bob K's 2th grader	448-0902	121111	426	X	X

**PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY**



## JUDICIARY

**BILLS BEING HEARD TODAY** SB 426

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
NORM NEWHALL	453-4500	ATTY FOR WORKERS	426	X	
Terry Keck	444-1555	Dept of Labor	426		
Riley Johnson	443-3797	MT-IFB	426		X
Jon BENMON	697-0568	MT Chamber	426		X
Reginald Denmark	2-0230	Am. One Assn	510	✓	
John H. Shaw	760-770 6425	PCAA	426		X
Mike Murphy	235-4555	MWRA	450		X
FRANK J. SMITH	768-3841	SD-16	450	X	
Nancy Butler	444-7725	MT State Fund	426		X
<del>Don Fudge</del>					
Jason Mikh	442-1708	MT AFL-CIO	426	X	
<del>Tom Welch</del>	<del>442-2700</del>	<del>MT AFL-CIO</del>	<del>426</del>	<del>X</del>	<del></del>
Tom Welch	214-4013	injured WORKERS	426	X	
JOHN QINTA	675-2700	Salish-L. Fumura Tank	450	X	
Chris Tweeten	1380	Compass Comm'n	450		X
Jason Todhunter	253-3807	MLA	426		X
ROGER McBLEIN	442-9555	ITAM	51-10	X	
Guy DeHussen	442-0230	State Farm	5110	X	

**PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY**